

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 144 of 1983

Date of decision: 10-10-1997

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

-----  
MAHIPATSINH HIMATSINH

Versus

STATE OF GUJARAT  
-----

Appearance:

None present for Petitioner

Ms. Siddhi Talati for Respondent No. 1

DELETED for Respondents No. 2 and 3

None present for Respondent No. 4, 5 and 6  
-----

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 10/10/97

## ORAL JUDGEMENT

Father of the petitioner, late Himatsingh expired on 8-3-1976, leaving behind his son, the petitioner, and five daughters. It is the case of the petitioner that as his father died without making any testamentary disposition of the property under the Hindu Succession Act, 1956, the daughters (petitioner's sisters) are entitled to their share equal to that of the son. At the time of death of father of the petitioner he was owning and possessing agricultural land ad measuring 101 acres 7 gunthas on the record. After death of his father, petitioner and his sisters approached the Revenue Authorities for mutation of aforesaid property in their names, and changes were effected on the record of rights, being Village Form No.6 on 10th March, 1976 vide entry No.606.

2. The Gujarat Agricultural Land Ceiling Act, 1976 has come into force in the State with effect from 1st April, 1976. Notice has been given to the petitioner by the competent authority for determination of agricultural land ceiling in respect of the disputed land, and accordingly Form No.2 was submitted on 29th June, 1976. The Agricultural Land Ceiling Tribunal after recording evidence of the petitioner as well as his sisters, under order dated 28th November, 1980 held that there was no excess land so far as the petitioner is concerned. The Assistant Collector, Dhrangadhra, issued notice on 7-8-1981 to the petitioner to show cause as to why the order of the Mamlatdar & A.L.T. should not be set aside. The reason set out for review of the order of the Mamlatdar & A.L.T. was that in accordance with the definition of family in section 6(3B) joint family was entitled to hold 86 acres and 10 gunthas of land and therefore the decision of the Tribunal that there was no land to be treated as surplus was liable to be set aside. The petitioner, on the date fixed for hearing of the notice, made request for adjournment of the matter for the reason that he was busy in connection with some obsequies ceremony. But that application was rejected and the the Asst. Collector, under order dated 7-9-1981 held that the petitioner is entitled to hold only 54 acres land. Against the said order the petitioner filed revision application before the Gujarat Revenue Tribunal in which sisters of the petitioner were also joined as party respondents. That revision application came to be dismissed on 17th September, 1982. Hence this special civil application.

3. On the last date of hearing, Mr. P.M. Raval, learned counsel, relying on the decision of this Court in special civil application No.12556/94 contended that, the succession in the case in hand was opened much earlier to the date on which Agricultural Land Ceiling Act had come into force and as such daughters have their own independent share in the property as per the provisions of the Hindu Succession Act, 1956. This contention has been made on the basis that the father of the petitioner has not made testamentary dispensation of the land in dispute. This matter has been adjourned from time to time to give opportunity to the counsel for the respondent Government to study the matter and to assist the court whether the daughters will get a share in the property, agricultural land of their father. Ms. Siddhi Talati, counsel for the respondents made statement that in such matter daughters will have their independent share in the property - agricultural land. In view of this admission made by the counsel for the respondent State at least now it is a case where the Assistant Collector should have given notice to all the sisters of the petitioner, and the order could have been passed only after hearing them. This contention has also been raised by the counsel for the petitioner before the Tribunal, but that was not accepted. But as stated earlier, it is a important issue on which also the authorities have to decide the matter, and more so when the counsel for the State Government admits for the daughters for their independent share in a case where the Succession has opened earlier to coming into force of the 1976 Act, where holder of the land had died without making any testamentary disposition of the property.

4. In the result this special civil application succeeds and the same is allowed. Order of the Assistant Collector is quashed and set aside and the matter is remanded back to the Assistant Collector, Dhrangadhra, with direction to decide the matter afresh in accordance with law, after giving notice to the daughters of late Himatsinghji and others. As this matter is pending for years together and pertains to agricultural land ceiling it is expected of the Asst. Collector, Dhrangadhra to decide the same within a period of six months from the date of the receipt of writ of this order. It is the duty of the petitioner to see that he and all of his sisters either personally or through their representative remain present before the said authority on 20th January, 1988. The said authority will not give any notice of the proceedings to the petitioner or his sisters. It is further made clear that the Assistant Collector will not go by the admission made by the learned counsel for the

State before this Court, but he will decide the matter in accordance with law. Rule made absolute in the aforesaid terms. No order as to costs.

.....

csm